

**DOCKET NO.:** VTN-0564  
**Application No.:** 09/819,074  
**Office Action Dated:** February 3, 2003

**PATENT**

**RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP. NO. 2878**

### **REMARKS/ARGUMENTS**

Claims 1-26 are pending in this patent application.

As a preliminary matter, Applicants provide a review of the patents and patent applications that claim priority of the patent application from which the instant application derives:

The instant application (Attorney Docket No. VTN-564) is a continuation of Serial No. 09/187,579 (Attorney Docket No. VTN-423), which issued as U.S. Pat. No. 6,246,062 B1 on June 12, 2001.

Serial No. 09/420,569 (Attorney Docket No. VTN-476), which issued on April 15, 2003 as U.S. Pat. No. 6,548,818, was filed on October 19, 1999 as a continuation-in-part of Serial No. 09/187,579 (Attorney Docket No. VTN-423).

Serial No. 10/051,992 (Attorney Docket No. VTN-572), which is currently pending, was filed on January 17, 2002 as a continuation of Serial No. 09/420,569 (Attorney Docket No. VTN-476).

Serial No. 10/372,463 (Attorney Docket No. VTN-476DIV1), which is currently pending, was filed on February 24, 2003 as a divisional of Serial No. 09/420,569 (Attorney Docket No. VTN-476).

The outstanding Office Action alleges that the Rule 131 declaration that Applicants filed on October 23, 2002, does not overcome prior rejections based on U.S. Patent No. 6,124,594A to Duggan *et al.* ("the Duggan patent"). Applicants provide herewith a copy of a Rule 131 Declaration by Timothy P. Newton that was originally prepared and mailed to the USPTO on May 14, 2003, in connection with the above-noted U.S. Serial No. 10/051,992. The declaration addresses concerns that the Examiner raised with respect to the earlier declaration, and even more clearly demonstrates that Mr. Newton reduced the claimed invention to practice before the filing date of the Duggan patent. The declaration is made by

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only Mr. Newton because he was the joint inventor responsible for reducing the first working prototypes of the invention to practice as indicated in his declaration.

### **I. Rejections under 35 U.S.C. §§ 102 and 103 over the Duggan Patent**

Claims 1, 2, 4, 10, 11, 12, 15, 26, 17, 19, 20 and 22 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by the Duggan patent. Also, Claims 5-7, 9, 13, 14 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable for obviousness in view of the Duggan patent. However, since the Rule 131 Declaration of Timothy P. Newton provided herewith demonstrates that Applicants' invention was conceived and reduced to practice prior to the filing date of the Duggan patent, that patent is not "a patented granted on an application for patent by another filed in the United States before the invention by the applicant for patent," and thus does not constitute prior art under 35 U.S.C. § 102(e). Accordingly, Applicants respectfully request that the 35 U.S.C. § 102 and 103 rejections based on the Duggan patent be withdrawn.

### **II. Double Patenting Rejections**

Claims 1-12, 23, 24 and 13-22 stand rejected under 35 U.S.C. § 101 for statutory type double patenting as being allegedly unpatentable over claims 1-24 of prior U.S. Patent No. 6,246,062. Pursuant to the Decision Granting Petition mailed on October 12, 2001, in connection with both the instant patent application and parent application 09/187,579, Applicants will address this rejection in due course, upon the indication of otherwise allowable subject matter in the instant application. Accordingly, upon the Office's removal

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of the Duggan patent as prior art in view of the Rule 131 Newton declaration provided herewith, Applicants will consider canceling claims 1-12, 23, 24 and 13-22 of the instant application.

Claims 25 and 26 stand rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 8 and 4 of U.S. Patent No. 6,246,062. Applicants request that this rejection be deferred pending some identification of allowable subject matter, as it likely can be resolved (depending upon the subject matter ultimately allowed) through the filing of a suitable terminal disclaimer.

### **III. Conclusions**

Applicants request the Examiner to:

- (1) consider the Rule 131 declaration of Newton provided herewith;
- (2) withdraw the Duggan patent as prior art so that only the statutory double patenting rejection of claims 1-24 remain pursuant to the Decision Granting Petition mailed October 12, 2001, upon which Applicants will consider canceling claims 1-24; and
- (3) reconsider and withdraw the standing rejections of claims 25 and 26.

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If the Examiner is of contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-5984.

Respectfully submitted,



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